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## ARTICLE 2.0000 AIR POLLUTION CONTROL REGULATIONS AND PROCEDURES

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## **SECTION 2.2000 TRANSPORTATION CONFORMITY**

### **2.2001 PURPOSE, SCOPE AND APPLICABILITY**

(a) The purpose of this Section is to assure the conformity of transportation plans, programs, and projects that are developed, funded, or approved by the United States Department of Transportation and by metropolitan planning organizations or other recipients of funds under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.), or State or Local only sources of funds, with all plans required of areas designated as nonattainment or maintenance under 40 CFR 81.334 and listed in Paragraph (b), (c), or (d) of this Regulation.

(b) This Section applies to the emissions of volatile organic compounds and nitrogen oxides in Mecklenburg County.

(c) This Section applies to the emissions of carbon monoxide in Mecklenburg County.

(d) This Section applies to the emissions of:

- (1) particulate matter in areas identified in 40 CFR 81.334 as nonattainment for fine particulate (PM<sub>2.5</sub>), or
- (2) volatile organic compounds or nitrogen oxides in areas identified in 40 CFR 81.334 as nonattainment for ozone.

(e) This Section applies to FHWA/FTA projects or regionally significant State or local projects. For FHWA/FTA projects or regionally significant State or local projects in the areas identified in Paragraphs (b), (c), or (d) of this Regulation and for the pollutants identified in Paragraphs (b), (c), or (d) of this Regulation, this Section applies to:

- (1) the adoption, acceptance, approval, or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a metropolitan planning organization or the United States Department of Transportation;
- (2) the adoption, acceptance, approval, or support of transportation improvement programs or amendments to transportation improvement programs pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a metropolitan planning organization or the United States Department of Transportation; or
- (3) the approval, funding, or implementation of FHWA/FTA projects.

Conformity determinations are not required under this Section for individual projects that are not FHWA/FTA projects. However, 40 CFR 93.121 shall apply to these projects if they are regionally significant projects.

(f) This Section applies to maintenance areas for 20 years from the date the Environmental Protection Agency approves the area's request under Section 107(d) of the Clean Air Act for redesignation to attainment.

*History Note:* Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);  
Eff. April 1, 1999.  
Amended Eff. December 1, 2005.

## **2.2002 DEFINITIONS**

For the purposes of this Section, the definitions contained in 40 CFR 93.101 and the following definitions apply:

- (1) **“Consultation”** means that one party confers with another identified party, provides all information necessary to that party needed for meaningful input, and considers and responds to the views of that party in a timely, substantive written manner prior to any final decision.
- (2) **“Regionally significant project”** means a transportation project (other than an exempt project under 40 CFR 93.126) that is on a facility that serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls and sports complexes, or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area’s transportation network, including at a minimum all principal arterial highways and all fixed guide way transit facilities that offer an alternative to regional highway travel.
- (3) **“Regionally significant State or local project”** means any highway or transit project that is a regionally significant project and that is proposed to receive only funding assistance (receives no federal funding) or approval through the State or any local program.

*History Note:* Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);  
Eff. April 1, 1999.

## **2.2003 TRANSPORTATION CONFORMITY DETERMINATION**

(a) Conformity analyses, determinations, and redeterminations for transportation plans, transportation improvement programs, FHWA/FTA projects, and State or local regionally significant projects shall be made according to the requirements of 40 CFR 93.104 and shall comply with the applicable requirements of 40 CFR 93.119, 93.120, 93.124, 93.125, and 93.126. For the purposes of this Regulation, regionally significant State or local projects shall be subject to the same requirements under 40 CFR Part 93 as FHWA/FTA projects except that State Environmental Policy Act procedures and requirements shall be substituted for National Environmental Policy Act procedures and requirements. Regionally significant State or local projects subject to this Section for which the State Environmental Policy Act process and a conformity determination have been completed may proceed toward implementation without further conformity determination unless more than three years have elapsed since the most recent major step (State Environmental Policy Act process completion, start of final design, acquisition of a significant portion of the right-of-way, or approval of the plans, specifications, and estimates) occurred. All phases of these projects considered in the conformity determination are also included if these phases were for the purpose of funding final design, right-of-way acquisition,

construction, or any combination of these phases.

(b) Before making a conformity determination, the metropolitan planning organizations, local transportation departments, North Carolina Department of Transportation, United States Department of Transportation, the North Carolina Department of Environment and Natural Resources - Division of Air Quality (NCDENR-DAQ), local air pollution control agencies, and United States Environmental Protection Agency shall consult with each other on matters described in **NCAC Title 15A Chapter 2 Subchapter 2D .2005 - “Memorandum of Agreement”**. Consultation shall begin as early as possible in the development of the emissions analysis used to support a conformity determination. The agency that performs the emissions analysis shall make the analysis available to NCDENR-DAQ and at least 21 days shall be allowed for review and comment on the emissions analysis. The 21-day review period shall begin upon receipt of the analysis by the Director of NCDENR-DAQ. After review by NCDENR-DAQ, the approving agency shall seek public comments in accordance with its public participation policy. The agency making the conformity determination shall address all written comments received prior to close of the public comment period, and these comments and responses thereto shall be included in the final document. If NCDENR-DAQ disagrees with the resolution of its comments, the conflict may be escalated to the Governor within 14 days and shall be resolved in accordance with 40 CFR 93.105(d). The 14-day appeal period shall begin upon receipt by the Director of NCDENR-DAQ of the metropolitan planning organization’s resolution that determines conformity.

- (c) The agency that performs the conformity analysis shall notify the NCDENR-DAQ of:
- (1) any changes in planning or analysis assumptions (including land use and vehicle miles traveled (VMT) forecasts), and
  - (2) any revisions to transportation plans or transportation improvement plans that add, delete, or change projects that require a new emissions analysis (including design scope and dates that change the transportation network existing in a horizon year).

Comments made by the NCDENR-DAQ and responses thereto made by the agency shall become part of the final planning document.

(d) Transportation plans shall satisfy the requirements of 40 CFR 93.106. Transportation plans and transportation improvement programs shall satisfy the fiscal constraints specified in 40 CFR 93.108. Transportation plans, programs, and FHWA/FTA projects shall satisfy the applicable requirements of 40 CFR 93.109 through 93.118.

(e) Written commitments to implement control measures that are not included in the transportation plan and transportation improvement program (TIP) shall be obtained before a conformity determination and these commitments shall be fulfilled. Written commitments to implement mitigation measures shall be obtained before a positive conformity determination, and project sponsors shall comply with these commitments.

(f) A recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Act shall

not adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the requirements of 40 CFR Part 93 are fully complied with.

(g) The degree of specificity required in a transportation plan and the specific travel network assumed for air quality modeling shall not preclude the consideration of alternatives in the National Environmental Policy Act of 1969 process, in accordance with 40 CFR 93.107.

(h) When assisting or approving any action with air quality-related consequence, the Federal Highway Administration and the Federal Transit Administration of the Department of Transportation shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the national ambient air quality standards as provided under 40 CFR 93.103. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.

*History Note:* Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);  
Eff. April 1, 1999.

## **2.2004 DETERMINING TRANSPORTATION-RELATED EMISSIONS**

(a) The procedures in 40 CFR 93.122 shall be used to determine regional transportation-related emissions.

(b) The procedures in 40 CFR 93.123 shall be used to determine localized carbon monoxide concentrations (hot-spot analysis).

*History Note:* Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10);  
Eff. April 1, 1999.